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THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT

CHAPTER 24 AND 25

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CHAPTER 24

RESIDENTIAL LANDLORD AND TENANT ACT OF 1977

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Part 1
General Provisions

70-24-101. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

History: En. 42-401 by Sec. 1, Ch. 313, L. 1977; R.C.M. 1947, 42-401.

70-24-102. Purposes — liberal construction to promote. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are to:

(a) simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

History: En. 42-402 by Sec. 2, Ch. 313, L. 1977; R.C.M. 1947, 42-402.

70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household.

"Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

History: En. 42-409 by Sec. 9, Ch. 313, L. 1977; R.C.M. 1947, 42-409; amd. Sec. 2, Ch. 417, L. 1979.

70-24-104. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement which includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

History: En. 42-408 by Sec. 8, Ch. 313, L. 1977; R.C.M. 1947, 42-408.

70-24-105. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

History: En. 42-403 by Sec. 3, Ch. 313, L. 1977; R.C.M. 1947, 42-403.

Cross-References

Who may contract, 28-2-201.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Agency, Title 28, ch. 10.

70-24-106. Construction against implicit repeal. No part of this chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

History: En. 42-404 by Sec. 4, Ch. 313, L. 1977; R.C.M. 1947, 42-404.

70-24-107. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

History: En. 42-407 by Sec. 7, Ch. 313, L. 1977; R.C.M. 1947, 42-407.

70-24-108. What constitutes notice. (1) A person has notice of a fact if:

(a) he has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known address.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

History: En. 42-412 by Sec. 12, Ch. 313, L. 1977; R.C.M. 1947, 42-412.

70-24-109. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

History: En. 42-410 by Sec. 10, Ch. 313, L. 1977; R.C.M. 1947, 42-410.

Part 2
Rental Agreements

70-24-201. Rental agreement — terms and conditions. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

History: En. 42-413 by Sec. 13, Ch. 313, L. 1977; R.C.M. 1947, 42-413.

Cross-References

Plain Language in Contracts Act, Title 30, ch. 14, part 11.

70-24-202. Prohibited provisions in rental agreements. A rental agreement may not provide that a party:

(1) agrees to waive or forego rights or remedies under this chapter;

(2) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(3) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(1).

70-24-203. Agreement not to permit receipt of rent free of obligation. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 70-24-303.

History: En. 42-416 by Sec. 16, Ch. 313, L. 1977; R.C.M. 1947, 42-416.

70-24-204. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

History: En. 42-414 by Sec. 14, Ch. 313, L. 1977; R.C.M. 1947, 42-414.

Part 3

Rights and Duties of the Parties

70-24-301. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

History: En. 42-418 by Sec. 18, Ch. 313, L. 1977; R.C.M. 1947, 42-418.

70-24-302. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

History: En. 42-419 by Sec. 19, Ch. 313, L. 1977; R.C.M. 1947, 42-419.

70-24-303. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after July 1, 1977;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

History: En. 42-420 by Sec. 20, Ch. 313, L. 1977; R.C.M. 1947, 42-420.

70-24-304. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to chapter 25 of this title and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

History: En. 42-421 by Sec. 21, Ch. 313, L. 1977; R.C.M. 1947, 42-421.

70-24-305 through 70-24-310 reserved.

70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use,

or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

History: En. 42-423 by Sec. 23, Ch. 313, L. 1977; R.C.M. 1947, 42-423.

70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or his agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

History: En. 42-424 by Sec. 24, Ch. 313, L. 1977; R.C.M. 1947, 42-424.

70-24-313 through 70-24-320 reserved.

70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

History: En. 42-422 by Sec. 22, Ch. 313, L. 1977; R.C.M. 1947, 42-422.

70-24-322. Tenant to occupy as dwelling unit only — extended absence. (1) Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit.

(2) The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

History: En. 42-425 by Sec. 25, Ch. 313, L. 1977; R.C.M. 1947, 42-425.

Part 4
Remedies

70-24-401. Administration of remedies — enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

History: En. 42-405 by Sec. 5, Ch. 313, L. 1977; R.C.M. 1947, 42-405.

70-24-402. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

History: En. 42-406 by Sec. 6, Ch. 313, L. 1977; R.C.M. 1947, 42-406.

70-24-403. Prohibited provision in rental agreement — unenforceability — damages. (1) A provision prohibited by 70-24-202 included in a rental agreement is unenforceable.

(2) If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

History: En. 42-415 by Sec. 15, Ch. 313, L. 1977; R.C.M. 1947, 42-415(2).

70-24-404. Unconscionability — court discretion to refuse enforcement. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the

court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

History: En. 42-411 by Sec. 11, Ch. 313, L. 1977; R.C.M. 1947, 42-411.

70-24-405. Failure of landlord to deliver possession — tenant's remedies. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 70-24-302, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

History: En. 42-427 by Sec. 27, Ch. 313, L. 1977; R.C.M. 1947, 42-427.

70-24-406. Failure of landlord to maintain premises — tenant's remedies. (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent;

(b) make repairs himself that do not cost more than 1 month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title.

History: En. 42-426 by Sec. 26, Ch. 313, L. 1977; R.C.M. 1947, 42-426.

70-24-407. Damages for minor violations by landlord. If the landlord fails to comply with the rental agreement or 70-24-303 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 70-24-406(2).

History: En. 42-428 by Sec. 28, Ch. 313, L. 1977; R.C.M. 1947, 42-428.

70-24-408. Purposeful or negligent failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or 70-24-303 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 70-24-406 or 70-24-407 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

History: En. 42-429 by Sec. 29, Ch. 313, L. 1977; R.C.M. 1947, 42-429.

70-24-409. Fire or casualty damage — rights of tenant. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

History: En. 42-431 by Sec. 31, Ch. 313, L. 1977; R.C.M. 1947, 42-431.

70-24-410. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(2).

70-24-411. Unlawful ouster, exclusion, or diminution of service — tenant's remedies. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to chapter 25 of this title and all prepaid rent.

History: En. 42-432 by Sec. 32, Ch. 313, L. 1977; R.C.M. 1947, 42-432.

70-24-412 through 70-24-420 reserved.

70-24-421. Action for nonpayment of rent — tenant's counterclaim. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

History: En. 42-430 by Sec. 30, Ch. 313, L. 1977; R.C.M. 1947, 42-430.

70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice.

If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

History: En. 42-433 by Sec. 33, Ch. 313, L. 1977; R.C.M. 1947, 42-433; amd. Sec. 1, Ch. 221, L. 1983; amd. Sec. 1, Ch. 232, L. 1985.

Compiler's Comments

1985 Amendment: At beginning of (2)(a) inserted exception clause; and inserted (2)(b).

1983 Amendment: Inserted (3).

Cross-References

"Mobile home" defined for tax purposes, 15-1-101.

"Mobile home" defined for moving permit purposes, 61-4-309.

70-24-423. Waiver of landlord's right to terminate for breach. Acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred. The acceptance of partial payment of rent due does not constitute a waiver of any right.

History: En. 42-436 by Sec. 36, Ch. 313, L. 1977; R.C.M. 1947, 42-436.

70-24-424. Refusal of access — landlord's remedies. If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

History: En. 42-441 by Sec. 41, Ch. 313, L. 1977; R.C.M. 1947, 42-441(1).

70-24-425. Failure of tenant to maintain dwelling — landlord's right to enter and repair. If there is noncompliance by the tenant with 70-24-321 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as

promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

History: En. 42-434 by Sec. 34, Ch. 313, L. 1977; R.C.M. 1947, 42-434.

70-24-426. Remedies for absence or abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 70-24-322, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

History: En. 42-435 by Sec. 35, Ch. 313, L. 1977; R.C.M. 1947, 42-435.

70-24-427. Landlord's remedies after termination. If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

History: En. 42-438 by Sec. 38, Ch. 313, L. 1977; R.C.M. 1947, 42-438.

70-24-428. Landlord's recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

History: En. 42-439 by Sec. 39, Ch. 313, L. 1977; R.C.M. 1947, 42-439.

70-24-429. Holdover remedies — consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(3).

70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed a landlord who stores the property himself, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(7) A public or private sale authorized by this section shall be conducted under the provisions of 30-9-504(3) or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale and any delinquent rent or damages owing on the premises and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes.

History: En. 42-437 by Sec. 37, Ch. 313, L. 1977; R.C.M. 1947, 42-437; amd. Sec. 1, Ch. 483, L. 1985.

Compiler's Comments

1985 Amendment: In (1) at end after "premises", deleted "the landlord shall:

(a) make reasonable attempts to notify the tenant in writing that the property must be removed:

(i) from the premises; or

(ii) from the place of safekeeping if the landlord has stored the goods as provided in subsection (3) of this section; and

(b) specify a day not less than 15 days after delivery of a notice mailed by certified mail to the last-known address of the tenant, at which specified time the property will be disposed of if not removed.

(2) The landlord may dispose of the property by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof" and inserted "and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises"; in (2), at beginning deleted "After notifying the tenant as required by subsection (1) of this section", in first sentence, before "store all goods", inserted "inventory and", inserted second sentence relating to storage charge; inserted (3) and (4); in (5), near beginning substituted "subsection (3)" for "subsection (1) of this section", near end of second sentence, before "storage costs", deleted "reasonable or actual", and inserted last two sentences of (5); in (7) after "30-9-504(3)", inserted "or the sheriff's sale provisions of Title 25, chapter 13, part 7"; and in (8) near middle of first sentence, after "sale", inserted "and any delinquent rent or damages owing on the premises".

70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable

presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2).

History: En. 42-442 by Sec. 42, Ch. 313, L. 1977; R.C.M. 1947, 42-442.

70-24-432 through 70-24-440 reserved.

70-24-441. Termination by landlord or tenant. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

History: En. 42-440 by Sec. 40, Ch. 313, L. 1977; R.C.M. 1947, 42-440(1), (2).

70-24-442. Attorney fees — costs. (1) In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

(2) As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

History: En. 42-417 by Sec. 17, Ch. 313, L. 1977; R.C.M. 1947, 42-417.

CHAPTER 25

RESIDENTIAL TENANTS' SECURITY DEPOSITS

Part 1 — General Provisions

Section

70-25-101. Definitions.
70-25-102. Application of chapter.
70-25-103. Waivers and contrary provisions invalid.

Part 2 — Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom.
70-25-202. List of damages and refund — delivery to departing tenant.
70-25-203. Failure to provide list — forfeiture of deduction rights.
70-25-204. Wrongful withholding of security deposit — action.
70-25-205. Failure of departing tenant to furnish new address.
70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.

Part 1

General Provisions

70-25-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenant's failure to bring the premises to the condition it was at the time of renting.

(2) "Damage" means any and all tangible loss, injury, or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees, or invitees, as well as any and all tangible loss, injury, or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(3) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas, and storage facilities to which the tenant has access, as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to and cleaning of the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit.

History: En. 42-301 by Sec. 1, Ch. 219, L. 1974; amd. Sec. 1, Ch. 297, L. 1977; R.C.M. 1947, 42-301.

70-25-102. Application of chapter. This chapter applies to all rentals of dwellings, including mobile homes but excluding property of public housing authorities.

History: En. 42-302 by Sec. 2, Ch. 219, L. 1974; R.C.M. 1947, 42-302.

70-25-103. Waivers and contrary provisions invalid. Any provision of a leasehold agreement, either oral or written, that is contrary to this chapter is invalid. Any attempted waiver of this chapter by the tenant is invalid.

History: En. 42-309 by Sec. 9, Ch. 219, L. 1974; R.C.M. 1947, 42-309; amd. Sec. 13, Ch. 115, L. 1979.

Part 2

Rights and Duties

70-25-201. Security deposit — deductions authorized therefrom. (1) Any landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for actual cleaning expenses.

(2) No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges may be deducted until notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has 48 hours to complete the required cleaning.

(3) No person may deduct or withhold from the security deposit any amount for purposes other than those set forth in this section.

History: En. 42-303 by Sec. 3, Ch. 219, L. 1974; amd. Sec. 2, Ch. 297, L. 1977; R.C.M. 1947, 42-303; amd. Sec. 14, Ch. 115, L. 1979.

70-25-202. List of damages and refund — delivery to departing tenant. Every landlord, within 30 days subsequent to the termination of a tenancy or within 30 days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any damage and cleaning charges, brought after the provisions of 70-25-201 have been followed, to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in 70-25-201. Delivery shall be accomplished by mailing the list and refund to the tenant's last-known address or the new address provided by the tenant.

History: En. 42-304 by Sec. 4, Ch. 219, L. 1974; amd. Sec. 3, Ch. 297, L. 1977; R.C.M. 1947, 42-304.

70-25-203. Failure to provide list — forfeiture of deduction rights. Any landlord who fails to provide the departing tenant with a written list of damage and cleaning charges as required by 70-25-202 shall forfeit all rights to withhold any portion of the security deposit for the damages or cleaning charges.

History: En. 42-305 by Sec. 5, Ch. 219, L. 1974; amd. Sec. 4, Ch. 297, L. 1977; R.C.M. 1947, 42-305.

70-25-204. Wrongful withholding of security deposit — action. (1) Any person who wrongfully withholds a residential property security deposit or any portion thereof shall be liable in damages to the tenant in a civil action for an amount equal to double the sum determined to have been

wrongfully withheld or deducted. The attorney's fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises shall be on the landlord.

(2) No action may be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or his agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy; or

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises, whichever occurs first.

History: En. 42-306 by Sec. 6, Ch. 219, L. 1974; R.C.M. 1947, 42-306.

70-25-205. Failure of departing tenant to furnish new address. Failure by the departing tenant to provide the landlord with his new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, shall relieve the landlord from double liability as imposed by 70-25-204. Such failure shall not, however, bar the tenant from recovering the actual amount owing to him by the landlord.

History: En. 42-307 by Sec. 7, Ch. 219, L. 1974; R.C.M. 1947, 42-307.

70-25-206. Landlord to furnish statement of condition of premises at beginning of lease. (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement shall be barred from recovering any sum for damage to or cleaning of the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and

was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees.

History: En. 42-308 by Sec. 8, Ch. 219, L. 1974; amd. Sec. 5, Ch. 297, L. 1977; R.C.M. 1947, 42-308.